IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.42 OF 2007

IN

NOTICE OF MOTION NO.1767 OF 2006

IN

SUIT NO.1997 OF 2006

Mrs.Charu Kishor Mehta ...Appellant

Versus

Lilavati Kirtilal Mehta Medical Trust & Ors. ...Respondents

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Mr.Rohit Kapadia, Sr.Counsel with Mr.Swapnil Bangur i/b M/s.T.N.Tripathi & Co. for Appellant.

Mr.R.A.Dada, Sr.Counsel with Mr.Sanjay Jain i/b M/s.Nankani & Associates for Respondents 1, 2 and 5 to 9.

Mr.Virag Tulzapurkar, Sr.Counsel with Mr.Birendra Saraf i/b M.K.Banatwala for Respondent No.3.

Mr.S.G.Aney, Sr.Counsel with Mr.C.S.Kapadia i/b M.G.Gawde for Respondent No.4.

Mr.Janak Dwarkadas, Sr.Counsel with Mr.C.S.Kapadia i/b M.G.Gawde for Respondent No.10.

Mr.D.J.Khambatta, Sr.Counsel i/b Mr.Rakesh Pande for Respondent No.11.

Ms.Rajni Iyer, Sr.Counsel i/b Ms.Neelam J.Asrani for Respondents 12 and 13.

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CORAM : A.M.KHANWILKAR, J.

JANUARY 19, 2007.

P.C.

1. This Appeal from Order is directed against Judgment and Order passed by the City Civil Court, Greater Bombay dated 13th October 2006 on Notice of Motion No.1767 of 2006 in S.C.Suit No.1997 of 2006. By this order, the Trial Court has dismissed the Notice of Motion taken out by the Plaintiff for interim relief during the pendency of the Suit. The correctness of that decision is subject matter of this Appeal.

2. In substance, the grievance of the Plaintiff in the said Notice of Motion was in relation to giving effect to the Board Resolution dated 29th April 2006. Four resolutions came to be passed on that day in the Board meeting, which read thus:

"Resolution No.1

To resolve that the solidarity shown by some doctors (names mentioned in the resolution) towards the trust and its board of trustees be and hereby appreciated.

Resolution No.2

To resolve that all such actions and/or all such proceedings against the plaintiff and her family members viz.defendant Nos.11 to 13 as may be legally advised for their communications and conduct be adopted.

Resolution No.3

To resolve that plaintiff shall not interact or communicate with employees and/or consultants of the Lilavati Hospital and Research Centre and the trust save and except through the board of trustees and employees and/or consultants be and are hereby informed that they do not have to take into account any instructions directly given by plaintiff to them.

Resolution No.4

To resolve that M/s.Ayush Enterprises, Security Consultants, be and is hereby instructed not to allow defendant Nos.11 to 13 ingress anywhere in the premises of the Lilavati Hospital & Research Centre."

3. The Trial Court has elaborately considered all aspects of the matter in rejecting the claim of the Plaintiff for rejecting the prayer for interim relief during the pendency of the Suit.

4. I am broadly in agreement with reasons recorded by the Trial Court to reject the Plaintiff's claim. I am not recording my detailed reasons for affirming the said order on the request of the Counsel for the Appellant, as any opinion expressed by this Court may influence the outcome of the Suit which is still pending before the Trial Court.

5. Suffice it to observe that resolution Nos.1 and 4 do not impinge upon the rights of the Appellant/Plaintiff in any manner. The Plaintiff's right to entry in the Hospital complex to attend to routine activities within the Hospital Complex, is unaffected. The Resolutions in question also do not affect the right of the Appellant/Plaintiff to attend the Board meetings and to participate therein. At best, Resolution No.3 prevents the Appellant/Plaintiff from interacting or communicating with employees and/or consultants of Lilavati Hospital and Research Centre and its Trust. That Resolution, as rightly argued by the contesting Respondents, was necessitated in the fact situation of the present case, on account of

serious dispute between the parties for quite sometime. As to who amongst the trustees should be made responsible to interact with the employees, is a policy matter for the Trust, to ensure proper handling of the issues inter se. Insofar as Resolution No.2 is concerned, there can be no injunction to preclude the other party from pursuing legal remedy as may be permissible in law. In the result, this Appeal will have to be dismissed.

6. There is, however, substance in the grievance made on behalf of the parties appearing before this Court that the Trial Court has recorded findings which would result in influencing the proceedings before the Charity Commissioner. Needless to observe that the proceedings before the Charity Commissioner will have to be decided on its own merits in accordance with law, uninfluenced by any observations in the impugned Judgment, if any.

7. Having regard to the nature of dispute between the parties, it is appropriate that the Suit is finally disposed of expeditiously. The

Trial Court may finally dispose of the Suit preferably by end of March 2007. Parties assure through Counsel that they will extend full cooperation to the Trial Court for early disposal of the Suit. It will be open to the Defendants to waive service of Writ of Summons, if so advised. If such request is made before the Trial Court, the same may be considered on its own merits. All questions in the Suit are left open to be decided on its own merits uninfluenced by any observation in the impugned Judgment or for that matter, dismissal of this Appeal.

8. During the course of arguments, it was brought to my notice that some communication dated 18th January 2007 has been sent by Respondent Nos.12 and 13 which is addressed to Respondent No.10, purportedly in response to letter dated 12th January 2007 received by the said Respondents. My attention is invited to the contents of the said communication. For the time being, I am not examining those aspects. It will be open to the Respondent No.10 to take out such proceedings as may be advised, which will be decided on its own

merits in accordance with law.

9. Appeal dismissed, subject to above observations.

A.M.KHANWILKAR, J.